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UNITED STATES OF AMERICA

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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,)	Magistrate Case No. 08MJ8440
12 Plaintiff,)	
13 v.)	STIPULATION OF FACT AND JOINT
14 DANIEL HERNANDEZ-LOYA,)	MOTION FOR RELEASE OF
15 Defendant.)	MATERIAL WITNESS(ES) AND
)	<u>ORDER THEREON</u>
)	(Pre-Indictment Fast-Track Program)

17 **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES
18 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Caleb E.
19 Mason, Assistant United States Attorney, and defendant DANIEL HERNANDEZ-LOYA, by and
20 through and with the advice and consent of defense counsel, Timothy R. Garrison, Federal
21 Defenders of San Diego, Inc., that:

22 1. Defendant agrees to execute this stipulation on or before the first preliminary hearing
23 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,
24 intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead
25 guilty to the pre-indictment information charging defendant with a non-mandatory minimum count
26 of Bringing in Aliens Without Presentation and Aiding and Abetting, in violation of 8 U.S.C.
27 § 1324(a)(2)(B)(iii) and 18 U.S.C. § 2.

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1 2. Defendant acknowledges receipt of a plea agreement in this case and agrees to
2 provide the signed, original plea agreement to the Government not later than five business days
3 before the disposition date set by the Court.

4 3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or
5 before **June 18, 2008**.

6 4. The material witness, Jose Cedano-Martinez, in this case:

7 a. Is an alien with no lawful right to enter or remain in the United States;

8 b. Entered or attempted to enter the United States illegally on or about
9 May 16, 2008;

10 c. Was found in a tractor trailer driven by defendant at the Calexico, California,
11 West Port of Entry (POE), and that defendant knew or acted in reckless disregard of the fact that he
12 was an alien with no lawful right to enter or remain in the United States;

13 d. Was paying or having others pay on his behalf \$2,000 to others to be brought
14 into the United States illegally and/or transported illegally to his destination therein; and,

15 e. May be released and remanded immediately to the Department of Homeland
16 Security for return to his country of origin.

17 5. After the material witness is ordered released by the Court pursuant to this stipulation
18 and joint motion, if defendant does not plead guilty to the charge set forth above, for any reason, or
19 thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,
20 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

21 a. The stipulated facts set forth in paragraph 4 above shall be admitted as
22 substantive evidence;

23 b. The United States may elicit hearsay testimony from arresting agents
24 regarding any statements made by the material witness(es) provided in discovery, and such
25 testimony shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements
26 against interest of (an) unavailable witness(es); and,

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28 Stipulation of Fact and Joint Motion for Release of
Material Witness(es) And Order Thereon in
United States v. Daniel Hernandez-Loya

1 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),
 2 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted
 3 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant
 4 waives the right to confront and cross-examine the material witness(es) in this case.

5 6. By signing this stipulation and joint motion, defendant certifies that defendant has
 6 read it (or that it has been read to defendant in defendant's native language). Defendant certifies
 7 further that defendant has discussed the terms of this stipulation and joint motion with defense
 8 counsel and fully understands its meaning and effect.

9 Based on the foregoing, the parties jointly move the stipulation into evidence and for the
 10 immediate release and remand of the above-named material witness(es) to the Department of
 11 Homeland Security for return to their country of origin.

12 It is STIPULATED AND AGREED this date.

13 Respectfully submitted,

14 KAREN P. HEWITT
 15 United States Attorney

16 Dated: 6/3/08

Caleb E. Mason
 17 CALEB E. MASON
 Assistant United States Attorney

18 Dated: 5/28/08

Timothy R. Garrison
 19 TIMOTHY R. GARRISON
 Defense Counsel for DANIEL HERNANDEZ-LOYA

20 Dated: 5/28/08

Daniel Hernandez-Loya
 21 DANIEL HERNANDEZ-LOYA
 Defendant

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 28 Stipulation of Fact and Joint Motion for Release of
 Material Witness(es) And Order Thereon in
 United States v. Daniel Hernandez-Loya

ORDER

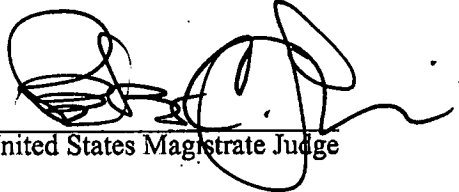
Upon joint application and motion of the parties, and for good cause shown,

THE STIPULATION is admitted into evidence, and,

IT IS ORDERED that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to their country of origin.

SO ORDERED.

Dated: 6-3-08



United States Magistrate Judge